S T A T E O F N E W Y O R K

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I N S E N A T E

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Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report -- ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the general business law,in relation to requiring automobile brokers to be licensed

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 1 of section 736 of the general business law, as added by chapter 616 of the laws of 1988, is amended and two new subdivisions 4 and 5 are added to read as follows:

1. "Automobile broker business" means any person who, for a fee, commission or other valuable consideration paid by a consumer offers to provide, provides, or represents that he will provide a service of purchasing, arranging, assisting or effecting the purchase of an automobile as agent, broker, or intermediary for a consumer. "Automobile broker business" does not include any person registered as a dealer pursuant to article sixteen of the vehicle and traffic law, or any person who sells, offers for sale or acts as agent, broker or intermediary in effecting the purchase of [three] TEN or less automobiles in any calendar year.

4. "SECRETARY" MEANS THE SECRETARY OF STATE.

5. "DIVISION" MEANS THE DIVISION OF CRIMINAL JUSTICE SERVICES.

S 2. The general business law is amended by adding four new sections 736-a, 736-b, 736-c and 736-d to read as follows:

S 736-A. LICENSE AND SURETY BOND REQUIRED. 1. NO PERSON, CORPORATION, PARTNERSHIP OR FIRM SHALL HEREAFTER CARRY ON THE BUSINESS OF AN AUTOMOBILE BROKER, AS DEFINED IN SECTION SEVEN HUNDRED THIRTY-SIX OF THIS ARTICLE, WITHOUT FIRST HAVING (A) RECEIVED A LICENSE TO ENGAGE IN SUCH PRACTICE IN THE MANNER PRESCRIBED IN THIS ARTICLE, AND (B) OBTAINED A SURETY BOND PRESCRIBED IN SECTION SEVEN HUNDRED FORTY-A OF THIS ARTICLE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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2. NO PERSON SHALL OWN, CONTROL OR OPERATE, WHETHER AS A SOLE PROPRIETOR, PARTNER, SHAREHOLDER, OFFICER, INDEPENDENT CONTRACTOR OR OTHER PERSON, AN AUTOMOBILE BROKER BUSINESS, AS DEFINED IN SECTION SEVEN HUNDRED THIRTY-SIX OF THIS ARTICLE, WITHOUT FIRST HAVING (A) RECEIVED A LICENSE TO ENGAGE IN SUCH PRACTICE IN THE MANNER PRESCRIBED IN THIS ARTICLE, AND (B) OBTAINED A SURETY BOND PRESCRIBED IN SECTION SEVEN HUNDRED FORTY-A OF THIS ARTICLE.

S 736-B. APPLICATION FOR LICENSES. 1. APPLICATION FOR A LICENSE REQUIRED UNDER THIS ARTICLE SHALL BE IN WRITING, UNDER OATH, AND IN THE FORM PRESCRIBED BY THE SECRETARY, AND SHALL CONTAIN THE FOLLOWING:

A. THE EXACT NAME AND THE ADDRESS OF THE APPLICANT AND ITS DATE OF INCORPORATION;

B. THE NAME AND THE BUSINESS AND RESIDENTIAL ADDRESS OF EACH PRINCIPAL AND OFFICER OF THE APPLICANT;

C. THE COMPLETE ADDRESS WHERE THE BUSINESS OF THE APPLICANT IS TO BE CONDUCTED, SHOWING THE STREET AND NUMBER, IF ANY, POST OFFICE AND BUILDING AND ROOM NUMBER, IF ANY, THE OFFICE BUILDING AND ROOM NUMBER, IF ANY, AND THE MUNICIPALITY AND COUNTY;

D. IF THE APPLICANT HAS ONE OR MORE BRANCHES, SUBSIDIARIES OR AFFILIATES OPERATING IN THE STATE, THE COMPLETE ADDRESS OF EACH SUCH PLACE OF BUSINESS; AND

E. A COMPLETE SET OF TWO FINGERPRINT CARDS FOR EACH PRINCIPAL AND OFFICER OF THE APPLICANT ON A STANDARD FINGERPRINT CARD APPROVED BY THE DIVISION AND A FEE PURSUANT TO SUBDIVISION EIGHT-A OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW, AND AMENDMENTS THERETO, FOR THE COST OF THE DIVISION'S FULL SEARCH AND RETAIN PROCEDURES, WHICH FEE SHALL BE REMITTED BY THE SECRETARY TO THE DIVISION FOR DEPOSIT BY THE COMPTROLLER INTO THE GENERAL FUND. BEFORE APPROVING SUCH APPLICATION THE SECRETARY, OR HIS OR HER DESIGNEE, SHALL FORWARD ONE COPY OF SUCH FINGERPRINT CARD AND THE PROCESSING FEE TO THE DIVISION UPON RECEIPT OF SUCH FINGERPRINTS. THE DIVISION SHALL FORWARD TO THE SECRETARY A REPORT WITH RESPECT TO THE APPLICANT'S PREVIOUS CRIMINAL HISTORY, IF ANY, OR A STATEMENT THAT THE APPLICANT HAS NO PREVIOUS CRIMINAL HISTORY ACCORDING TO ITS FILES. IF ADDITIONAL COPIES OF FINGERPRINTS ARE REQUIRED, THE APPLICANT SHALL FURNISH THEM UPON REQUEST.

2. UPON ORIGINAL APPLICATION FOR A LICENSE TO OPERATE AN AUTOMOBILE BROKER BUSINESS, THE APPLICANT SHALL PAY AN APPLICATION FEE, IN SUCH AMOUNT AS MAY BE DETERMINED BY THE SECRETARY, NOT TO EXCEED THREE HUNDRED DOLLARS. UPON APPLICATION FOR A LICENSE RENEWAL, THE LICENSEE SHALL PAY A RENEWAL PROCESSING FEE IN SUCH AMOUNT AS SHALL BE DETERMINED BY THE SECRETARY, NOT TO EXCEED THREE HUNDRED DOLLARS.

S 736-C. CONDITIONS PRECEDENT TO LICENSING. UPON FILING OF AN APPLICATION FOR A LICENSE, IF THE SECRETARY SHALL BE SATISFIED OF THE GOOD CHARACTER, COMPETENCY AND INTEGRITY OF THE APPLICANT, AND OF THE PRINCIPALS AND OFFICERS THEREOF ARE SUCH AS TO COMPLY WITH THE PROVISIONS OF THIS ARTICLE, HE OR SHE SHALL THEREUPON ISSUE A LICENSE IN DUPLICATE TO OPERATE AN AUTOMOBILE BROKER BUSINESS IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE. THE SECRETARY SHALL TRANSMIT ONE COPY OF SUCH LICENSE TO THE LICENSEE AND FILE ANOTHER WITH THE SECRETARY. SUCH LICENSE SHALL REMAIN IN FULL FORCE AND EFFECT FOR A PERIOD OF TWO YEARS UNLESS IT IS SURRENDERED BY THE LICENSEE OR REVOKED OR SUSPENDED AS HEREINAFTER PROVIDED; IF THE SECRETARY SHALL NOT SO FIND, THE SECRETARY SHALL NOT ISSUE SUCH LICENSE AND THE SECRETARY SHALL NOTIFY THE APPLICANT OF THE DENIAL IN WRITING. THE SECRETARY SHALL APPROVE OR DENY EVERY APPLICATION FOR LICENSE HEREUNDER WITHIN NINETY DAYS FROM THE FILING THEREOF.

S 736-D. LICENSING. 1. EACH LICENSE ISSUED UNDER THIS ARTICLE SHALL STATE THE ADDRESS OR ADDRESSES AT WHICH THE BUSINESS IS TO BE CONDUCTED AND SHALL STATE FULLY THE NAME OF THE LICENSEE, AND THE DATE AND PLACE OF ITS INCORPORATION AND THE EXPIRATION DATE OF THE LICENSE. A COPY OF SUCH LICENSE SHALL BE PROMINENTLY POSTED IN EACH PLACE OF BUSINESS OF THE LICENSEE. SUCH LICENSE SHALL NOT BE TRANSFERABLE OR ASSIGNABLE.

2. IN THE EVENT THE LOCATION AT WHICH THE BUSINESS IS TO BE CONDUCTED SHALL BE CHANGED, THE LICENSEE SHALL FORTHWITH NOTIFY THE SECRETARY IN WRITING, WHO SHALL THEREUPON WITHOUT CHARGE ATTACH TO THE LICENSE A RIDER SETTING FORTH SUCH CHANGED LOCATION.

3. IN THE EVENT THAT THERE SHALL BE ANY CHANGE AMONG THE PRINCIPALS OR OFFICERS OF ANY LICENSEE, THE LICENSEE SHALL FORTHWITH NOTIFY THE SECRETARY IN WRITING, OF THE NAME AND ADDRESS OF EACH NEW PRINCIPAL OR OFFICER, AND SHALL SUBMIT A COMPLETE SET OF TWO FINGERPRINT CARDS FOR EACH SUCH PRINCIPAL OR OFFICER IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH E OF SUBDIVISION ONE OF SECTION SEVEN HUNDRED THIRTY-SIX-B OF THIS ARTICLE.

4. PRIOR TO OR UPON THE SALE OR TRANSFER OF ALL OR THE MAJORITY OF THE STOCK OR ASSETS OF ANY AUTOMOBILE BROKER BUSINESS, THE NEW PRINCIPALS OR OFFICERS SHALL APPLY FOR A NEW LICENSE WITH THE SECRETARY IN ACCORDANCE WITH THE PROVISIONS OF SECTION SEVEN HUNDRED THIRTY-SIX-B AND SECTION SEVEN HUNDRED THIRTY-SIX-C OF THIS ARTICLE. SUCH APPLICATION SHALL BE MADE WITHIN SIXTY DAYS OF SUCH SALE OR TRANSFER.

5. A LICENSE GRANTED UNDER THE PROVISIONS OF THIS ARTICLE MAY BE RENEWED BY THE SECRETARY UPON APPLICATION THEREFOR BY THE LICENSEE, IN SUCH FORM AS THE SECRETARY MAY PRESCRIBE, ACCOMPANIED BY THE NON-REFUNDABLE RENEWAL PROCESSING FEE PURSUANT TO SUBDIVISION TWO OF SECTION SEVEN HUNDRED THIRTY-SIX-B OF THIS ARTICLE. IN NO EVENT WILL RENEWAL BE GRANTED MORE THAN SIX MONTHS AFTER THE DATE OF EXPIRATION OF A LICENSE. NO PERSON, FIRM, COMPANY, PARTNERSHIP OR CORPORATION SHALL CARRY ON ANY BUSINESS SUBJECT TO THIS ARTICLE DURING ANY PERIOD WHICH MAY EXIST BETWEEN THE DATE OF EXPIRATION OF A LICENSE AND THE RENEWAL THEREOF.

S 3. Section 743 of the general business law, as added by chapter 616 of the laws of 1988, is amended to read as follows:

S 743. Enforcement by attorney general. In addition to the other remedies provided, whenever there shall be a violation of this article, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court [may] SHALL impose a civil penalty of not [more] LESS than one thousand dollars AND NOT MORE THAN THREE THOUSAND DOLLARS for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

S 4. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that the secretary of state shall take actions necessary to provide for the issuance of licenses pursuant to section 736-d of the general business law, as added by section two of this act, prior to such date.